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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,312	09/26/2001	Cam Reed JR.	HO-P02301US0	9919
26271	7590	12/28/2004	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			COLE, LAURA C	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 09/964,312	Applicant(s) REED, CAM	
	Examiner Laura C Cole	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-10 are objected to because of the following informalities:

Claim 1 recites the limitation "said handle attachment" in Lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said concave back" in Line 16. (Line 4 recites "a *convex* back".) There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said handle attachment" in Line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said concave back" in Line 18. (Line 4 recites "a *convex* back".) There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said handle attachment" in Line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said concave back" in Line 14. (Line 4 recites "a *convex* back".) There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Chisholm, USPN 4,640,540.

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Chisholm discloses a gutter cleaning tool that comprises a scooping head (Figures 1-5 (10)) having a blade end (leftmost side of Figure 2) and a head attachment end (Figure 2 (18)) wherein the blade end is curved (Figures 1-4), and a handle having a gripping end (Figures 1 and 2 (20)). Figure 1 (20) is considered a "pole body" that is affixed to the scooping head. Further, the scooping head comprises a blade having a concave face and a convex back (see Figures), the blade end having a longitudinal axis extending vertically (see Figures), a head attachment end having a longitudinal axis extending vertically (20, at joint where "20" is indicated in Figure 5), the axis being substantially parallel to the blade end longitudinal axis (see Figure 2), the handle attachment end and the blade end connected in a manner (see Figures). The device of Chisholm is integrally formed (see Figures). The head attachment longitudinal axis (which would extend vertically in Figures 2-4) and the blade end longitudinal axis (which would extend vertically in Figures 2-4) form a plane, the concave face is configured to be open substantially perpendicular to that plane (see Figures 2-3 especially).

3. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by over Malless, Jr., USPN 4,447,927.

Malless, Jr. discloses a gutter cleaning apparatus that comprises a scooping head having a blade end (16) that has a concave face and convex back (see Figures) and a substantially longitudinal axis (extending vertically from 16), and a head attachment end (Figure 1 (12); Column 2 Lines 28-30) having a longitudinal axis (extending vertically) that is substantially parallel to the blade end longitudinal axis, and made of plastic (Column 3 Lines 37-40), wherein handle attachment end is curved in a manner allowing the blade end to fit up and over a gutter (see Figure 1), a handle (Figure 1 (50)) having a

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gripping end (outer circumference may be gripped) and a handle attachment end (lowermost portion of (50)), attachment poles made of plastic (Figure 1 and Figure 4; Column 3 Lines 44-46), a portion of the head attachment end is opposed from a portion of the concave back (see Figure 1, head attachment end, 12, extends upwards while the concave back extends downwards), the blade end and head attachment end are integrally formed (see Figures), and wherein the head attachment longitudinal axis (which extends vertically) and the blade end longitudinal axis (which also extends vertically) forms a vertical plane, the concave face configured to be open substantially perpendicular to the plane (the concave face is open in that it extends horizontally). There is a plurality of cleaning bristles (Figure 1 (24), (26), and (38)). Further, Figure 5 displays an attachment pole (32) having a first pole attachment end (34) and a second pole attachment end (34'), the first pole attachment end being detachably affixed to the head attachment end (30) of the scooping head. Even further, Figure 5 displays a handle (pole beneath (32)) having a gripping end and a handle attachment end (upper portion of pole beneath (32)) detachably affixed to the second pole attachment end (34') (see Column 2 Line 60 to Column 3 Line 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malless, Jr., USPN 4,447,927 in view of Beers, Jr. et al., USPN 6,393,646.

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Malless, Jr. discloses all elements above, however does not disclose a rubber grip on a gripping end.

Beers, Jr. et al. disclose a golf green brush that has a handle (Figures 1-2 (20)) with a rubber grip portion (Figures 1-2 (40); Column 2 Lines 7-16).

It would have been obvious for one of ordinary skill in the art to modify the gripping portion of the handle of Malless, Jr. by adding a rubber grip as Beers, Jr. et al. teach so that the user has a comfortable grip when manually cleaning a surface.

Applicants Arguments

4. In the response filed 09 November 2004, the Applicant contends that:

A. The limitation of “wherein the head attachment longitudinal axis and the blade end longitudinal axis form a plane, the concave face configured substantially perpendicular to said plane” distinguishes the Applicant’s invention over the ‘818 reference and the other references.

B. The ‘818 reference teaches away from the Applicant’s claimed invention.

Response to Arguments

5. Applicant's argument A filed 09 November 2004 have been fully considered but they are not persuasive.

A. Both Malless, Jr. and Chisholm include the head attachment longitudinal axis and the blade end longitudinal axis form a plane, the concave face configured substantially perpendicular to said plane (see above rejections). Although the Applicant attempts to define the axis by limiting them as “longitudinal axis”, the blade end axis and the head attachment end axis have not been defined further. “Longitudinal” is defined as “Of or relating to longitude or length” by *The American Heritage® Dictionary of the*

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The Examiner has interpreted that the “blade end longitudinal axis” is the axis that extends along a thickness length in the vertical direction of the blade end. The Applicant’s own specification and drawings do not attempt to define such axis.

6. Applicant's argument B with respect to Smith, USPN 4,848,818 has been considered but is moot in view of the new ground(s) of rejection.

Conclusion

7. From reviewing the drawings of the Applicant’s invention and the prior art made of record, the Examiner recognizes that the shapes of the scooping heads of Chisholm and Malless, Jr. differ from what the Applicant presents. The Applicant’s representative is invited to call the Examiner to see if language can be agreed upon.

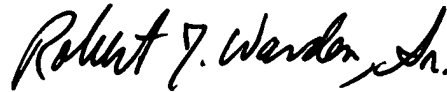
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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